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S.B. CIVIL MISC. APPEAL NO.1533/2006.
(Narayan Lal Vs. Kishan Lal & Ors.)

Date of Order :: 08.12.2006.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Bheru Lal Choudhary, for the appellant.

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For the fracture of upper left tibia and fibula sustained in a vehicular accident, the claimant-appellant has been awarded compensation in the sum of Rs.52,750/- by the Tribunal; and has filed this appeal seeking enhancement.

In the memo of appeal, the appellant-claimant has given out his age at about 51 years and during the course of submissions the age of the appellant has been stated at 50 years at the time of accident. It has been urged that because of the disablement suffered the appellant is unable to continue the job on lathe machine that has resulted in substantial reduction in his earnings; and that the Tribunal has been in error in not awarding reasonable amount towards loss of earning capacity.

During the course of submissions, learned counsel for the appellant placed for perusal the report said to have been issued by the Medical Board upon examination of the appellant on 14.12.2004. The accident occurred on

01.02.2004. The report states the age of the appellant at 60 years. Obviously, the appellant has not been forthright in his submissions regarding his age. Learned counsel submitted that the age of the appellant at 60 years seems to have been mentioned in the medical examination report with reference to the injury report wherein the age of the appellant was stated at 59 years. The injury report and so also Medical Board Examination Report have been prepared upon examination of the person of the appellant and in the Medical Examination Report all the facts and particulars of the appellant and the observations about impairing of joints have obviously been stated on the basis of information divulged by the appellant himself. It cannot be accepted that the age of the appellant in the range of 59 to 60 years as stated in the injury report and medical examination report are incorrect. It is, therefore, apparent that the appellant has not been forthright while making claim for compensation and so also in this appeal when the appellant has attempted to assert his age at the time of accident at about 50-51 years.

Moreover, the Medical Examination Report shows the impairing features in the manner that he was facing difficulty in walking, unable to squat and to sit cross leg, gross limping with restriction of movement of left knee; that he was unable to lift weight and to do hard work and that the left leg

was internally rotated with deformity and with wasting of muscles. The Board has certified his permanent disablement at 20%. Looking to the nature of injuries, the medical examination report and the age of the appellant, the Tribunal appears to be justified in awarding Rs.46,000/- towards disablement. The Tribunal has further allowed entire of Rs.2,750 towards medical expenditure on the basis of bills produced; Rs.1,000/- towards transportation and another Rs.1,000/- towards mental and physical agony and yet another Rs.1,000/- towards the effect of injuries in future. The Tribunal has further awarded Rs.1,000/- towards loss of income although no documentary evidence has been produced in that relation. No case for future loss of income is made out and the Tribunal has not committed any error in not awarding any amount on that count.

Learned counsel for the appellant has relied on a decision of this Court in Smt. Salma Bano Vs. Anand Singh & Ors. : 2001 (2) T.A.C. 164 (Raj.). In the said case, this Court has enhanced non-pecuniary loss in relation to the claimant who had suffered two fractures of shaft tibia, fibula in leg apart from injuries on the head, fingers and other parts of body and awarded other amount towards attendants, conveyance etc. that were not considered by the Tribunal. The age of the said claimant does not appear from the decision. Be that as it may,

awarding of compensation towards pecuniary and non-pecuniary losses in vehicular accident injury cases depends on variety of facts and nature of injuries in each individual case. Viewed from any angle, the decision relied upon by the learned counsel has no application to the facts of the present case.

On the whole, the award made by the Tribunal remains that of just compensation and cannot be said to be too low or inadequate so as to warrant interference in appeal.

Consequently, the appeal fails and is dismissed summarily.

(DINESH MAHESHWARI), J.

Mohan/